

The issues above listed are contained within K.S.A. 44-534a as appealable from preliminary hearings and, as such, the Appeals Board has the jurisdiction to consider same.

Claimant, a long term employee with respondent, alleged injury to his back on September 2, 1994. At that time, he did not seek medical treatment, waiting for several days until September 22 to obtain medical care for his injury.

Respondent's employee, Mr. Mike Roetto, did not actually see the accident, but did testify to seeing claimant on that date holding his back, moving slow and bent over. Mr. Roetto also testified to having overheard a conversation between two of claimant's supervisors admitting that they had seen claimant holding his back.

On the date of injury, claimant, while coming out of the bathroom, encountered Mr. Kenny Wiseman and advised him that he had injured his back. While there is a conflict between claimant's testimony and that of Mr. Wiseman, both agree claimant indicated an injury, with Mr. Wiseman contending claimant had stated that the injury had occurred at home.

Gerald Hardwick, Jr., claimant's supervisor, acknowledges receiving a telephone call from claimant on September 23, 1994, when claimant advised him he had injured his back. Mr. Hardwick denies claimant alleged the situation was work related and further denies being told by claimant on or about September 2, 1994, of any work-related injury to his back. The medical records of Dr. Showalter, on September 22, 1994, do indicate a three (3) week history of low-back pain with radiculopathy into claimant's left leg, which is consistent with claimant's allegations of a September 2, 1994 date of injury.

Based upon the evidence, the Appeals Board finds for preliminary hearing purposes claimant did prove by a preponderance of the credible evidence that he suffered accidental injury arising out of and in the course of his employment with respondent on the date alleged.

The Administrative Law Judge found that claimant had good cause for failing to advise the employer within ten (10) days of his accident based upon a lack of realization on the claimant's part that his problem was serious or severe. The Appeals Board finds that the evidence more properly supports a finding that claimant gave notice on September 2, 1994, to the respondent and/or its authorized agent in the person of Mr. Ken Wiseman, the claimant's supervisor. Respondent's contention that claimant did not suffer injury and further failed to advise anyone at the plant of this alleged injury does not appear to be supported by a preponderance of the credible evidence.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Alvin E. Witwer, dated April 10, 1995, is affirmed in all respects.

IT IS SO ORDERED.

Dated this ____ day of July, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Carston C. Johannsen, Merriam, Kansas
Matthew J. Stretz, Kansas City, Missouri
Alvin E. Witwer, Administrative Law Judge
David A. Schufelt, Acting Director